

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

David Alvarez
dba Kern Oil Filter
Recycling
974 Frontage Road
McFarland, California 93250
EPA ID No. CAL 000149101

Respondent.

Docket HWCA 2003/0333

STIPULATION AND ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control
(Department) and Kern Oil Filter Recycling (Respondent) enter
into this Stipulation and Order (Order) and agree as follows:

1. A dispute exists regarding the Enforcement Order
issued by the Department on January 12, 2004. (Attached as
Exhibit 1.)
2. The parties wish to avoid the expense of further
litigation and to ensure prompt action to achieve the Schedule
for Compliance below.
3. Jurisdiction exists pursuant to Health and Safety
Code section 25187.
4. Respondent waives any right to a hearing in this
matter.

5. This Order shall constitute full settlement of the violations alleged in the Enforcement Order, but does not limit the Department from taking appropriate enforcement action concerning other violations.

6. Respondent admits the allegations made in the Enforcement Order.

SCHEDULE FOR COMPLIANCE

7. Respondent has corrected the violations cited in the Enforcement Order. Respondent shall operate hereinafter in a manner that shall prevent recurrences of the violations cited herein.

7.1. Submittals: All submittals from Respondent pursuant to this Order shall be sent to:

Robert Kou, Unit Chief
Statewide Compliance Division
Department of Toxics Substances Control
1011 North Grandview Avenue
Glendale, California 91201

7.2. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent

shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

7.3. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

a. Modify the document as deemed necessary and approve the document as modified; or

b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

7.4. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

7.5. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such

period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

7.6. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

7.7. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem

necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

7.8. Sampling, Data, and Document Availability:

Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order.

Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

7.9. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 9.3 in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

7.10. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

7.11. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

7.12. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

8. Respondent shall pay the Department a total of \$7,000 as a penalty. The payments shall be paid in three (3) installments of \$2,000 and one (1) installment of \$1,000. The three (3) installments of \$2,000 are due and payable on June 1, 2004, September 1, 2004, and December 1, 2004. The one (1) installment of \$1,000 is due and payable on March 1, 2005. Respondent's checks shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Robert Kou, Unit Chief
Statewide Compliance Division
Department of Toxics Substances Control
1011 North Grandview Avenue
Glendale, California 91201

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

8.2. Respondent hereby agrees to send one of its employees to the California Compliance School, Modules I through IV. Attendance of each and every module must be

completed and Respondent must submit a Certificate of Satisfactory Completion issued by the California Compliance School to the Department within 185 days of the date of this Order. In recognition of this educational investment, the penalty imposed by this Order has been reduced by \$5,000 provided the employee satisfactorily completes the specified modules and the Department receives the Certificate of Satisfactory Completion within 185 days of the effective date of this Order. If Respondent fails to submit the Certificate of Satisfactory Completion as required, the penalty of \$5,000 becomes due and payable within 30 days after the 185 day period expires. Once the \$5,000 reduction is removed for the reason stated above, the total penalty due and owing to the Department is \$7,000. The 185-day period may be extended by a Department Branch Chief upon a written request from the Respondent demonstrating good cause.

OTHER PROVISIONS

10.1. Additional Enforcement Actions: By agreeing to this Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Order.

10.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred

by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

10.3 Parties Bound: This Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

10.4. Effective Date: The effective date of this Order is the date it is signed by the Department.

10.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: 03/08/2004

ORIGINAL SIGNED BY RESPONDENT'S REPRESENTATIVE
Signature of Respondent's
Representative

Dated: 03/08/2004

ORIGINAL SIGNED BY DAVID ALVAREZ
Typed or Printed Name and Title
of Respondent's Representative

Dated: 03/23/2004

ORIGINAL SIGNED BY ROBERT KOU
Department of Toxic Substances
Control